

Testimony of
GOVERNOR STUWART PAISANO
PUEBLO OF SANDIA

Before the United States Senate
Committee on Energy and Natural Resources
and Committee on Indian Affairs

April 24, 2002

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Good afternoon, Chairmen Bingaman and Inouye, Ranking Members Murkowski and Campbell, Senator Domenici and Members of the Committees. On behalf of the Pueblo of Sandia, I appreciate the opportunity to testify today in order to encourage this Committee to implement a fair and just resolution to the Sandia Mountain issue.

To our people, no issue before these Committees or this Congress could ever be more important than the protection of Sandia Mountain. For the Pueblo, it is not a matter of dollars and cents; rather, it is a matter of our centuries-old religious and cultural traditions.

Our people have been living on and using the Mountain for at least 600 years. It is central to our beliefs, practices, and prayers. The Mountain is the only source for certain resources we need for our religious ceremonies. Our spiritual leaders routinely make pilgrimages to the shrines on the Mountain and leave offerings. These shrines are located on the Mountain, from the foothills all the way to the crest.

To say that the Mountain is special or sacred to our people does not do it justice. Everyone at the Pueblo of Sandia, all those who came before us, and all who will follow us, will always hold this Mountain central in our hearts.

The United States Congress in an 1858 statute confirmed our Spanish land grant as extending to “the main ridge of Sandia Mountain.” From a legal standpoint, these words refer to the Mountain’s summit. The Supreme Court read these same words in an 1855 treaty concluded just three years earlier with the Yakima Tribe to mean a mountain’s summit. *Northern Pacific Ry. Co. v. United States*, 227 U.S. 355 (1913). The federal courts have read similar language in grants just to our south – to private landowners and the Isleta Pueblo – as conveying title to all lands to the summit of a mountain.

Because of its vital and irreplaceable significance to our religious and cultural traditions, the Pueblo of Sandia has always believed that the Mountain should remain wild and undeveloped. That is why we are so grateful to Senator Domenici for his efforts to preserve the Mountain. His leadership in establishing the Sandia Mountain Wilderness has helped to ensure that the Mountain is not further developed, at least in the short term, by commercial interests.

Chairman Bingaman, we want particularly to thank you for your leadership in introducing S.2018 that has brought us to this hearing. If we are going to protect Sandia

Mountain, we need to act now to work out any differences before the settlement agreement we reached two years ago with the United States expires on November 15.

This settlement agreement was reached after extensive negotiations between the Pueblo, the Sandia Peak Tram Company, and the Departments of Justice, the Interior and Agriculture. Representatives of Bernalillo County, the City of Albuquerque and a coalition of homeowners and users of the Mountain participated for nearly a year in these negotiations, but withdrew prior to their conclusion to pursue further litigation, and refused to sign the agreement.

We made a number of painful concessions to resolve the controversy. The other parties made concessions as well. Despite confirmation of our Spanish land grant by Congress, we agreed in the settlement agreement to:

1. United States title and continued Forest Service administration of the Mountain;
2. continued public access to the Mountain;
3. extinguishment of our title to the Mountain, subject to recognition of our rights and interests as set forth in the settlement agreement;
4. easements over our existing lands for roads and trails to the Forest Service facilities and two of the private subdivisions on the Mountain, and also to a utility corridor to the subdivisions;
5. disclaim – as we have always done – any title to privately-owned lands on the Mountain.

We continue to adhere to these concessions and to the agreement, even though since we signed it, the federal court of appeals ruled in our favor and the Interior Department Solicitor has determined that we hold title to the Mountain.

We believe S.2018 should be amended to more closely track the settlement agreement. First, however, I would like to highlight some of the major benefits the settlement and S.2018 provide for everyone.

THE MOUNTAIN WILL BE PRESERVED AND PROTECTED FOREVER.

The Pueblo is steadfastly and absolutely committed to protecting the Mountain. And we agree that preservation of the wilderness system is a national priority. For that reason, the Pueblo has committed to perpetual maintenance of the wilderness portions of the Mountain as wilderness – with strict adherence to the wilderness laws as they exist today. We have agreed that all commercial uses, including of course gaming, as well as mineral and timber production, would be forever prohibited on all parts of the Mountain.

We fear existing laws protecting wilderness could change. Our concern is that policy may change direction, as has often occurred when Native Americans are involved. We want to protect the Mountain not for just the next 25, 50, or even 100 years; we want to protect it forever. We therefore feel very strongly that perpetual preservation of the wilderness will be best served by giving the Pueblo a right to consent to all new uses of the Mountain should the Forest Service ever consider permitting new uses (which we hope they would not). We are committed to protecting this consent power, which is included in both the settlement agreement and S.2018.

THE AGREEMENT AND LEGISLATION BOTH RECOGNIZE THE PUEBLO’S RIGHTS AND INTERESTS IN THE MOUNTAIN.

As noted in the settlement agreement, over 250 years ago the King of Spain memorialized our ownership of the Mountain in a written grant. This grant was confirmed by the United States Congress in 1858. The grant set our eastern boundary as the “main ridge called Sandia.” No subsequent Act of Congress has ever extinguished our rights in the Mountain.

The settlement and S.2018 both codify the Pueblo’s right to use the Mountain to continue our centuries-old traditions. This simple acknowledgment, confirmed by the U.S. Department of the Interior as recently as last year, is essential to any settlement legislation we could support.

THE AGREEMENT AND LEGISLATION WILL PROTECT AND ENHANCE ACCESS TO THE MOUNTAIN FOR THE PUEBLO AND THE PUBLIC.

We realize, Mr. Chairman, that Sandia Mountain is not only important to the Pueblo, but also to the public at large. We have no desire to prevent the public from enjoying the Mountain's beauty and serenity. Like the settlement agreement, S.2018 allows public access to all parts of the Mountain. Thus, if S.2018 passes, hikers, hang-gliders, and all sorts of other recreation-seekers will be able to continue to enjoy the Mountain with the same freedom they do today. In fact, the settlement agreement and S.2018 both enhance access for the public by granting permanent rights-of-way over our existing lands to trail heads, picnic areas, and the like. This grant of permanent and secure access was a major concession made by the Pueblo and cannot be achieved through continued litigation.

We have heard some people criticize the settlement as a dangerous precedent. This is not so. We know of no other present situation where a National Forest has been mistakenly established on lands owned by an Indian tribe, confirmed by an Act of Congress, and where courts have recurrently read this very language to convey title to a tribe. Under the settlement agreement and S.2018, the Forest Service would continue to administer the Mountain and its wilderness, as it does today, notwithstanding our land grant.

THE AGREEMENT AND LEGISLATION BOTH CONFER SPECIFIC RIGHTS ON THE PARTIES INVOLVED AND, AS A RESULT, WILL FINALLY ALLOW US TO STOP LITIGATING OVER THE MOUNTAIN AND TO FOCUS ON PRESERVING AND ENJOYING IT.

Like most area residents who enjoy the Mountain, we want to put a long period of litigation and disharmony behind us. We have heard and read critics of the settlement agreement complain that the agreement is vague and will lead to future litigation. This charge – made by some of the same individuals and groups that withdrew from the settlement discussions – is simply untrue. There is only one certain way to avoid further litigation; that is for Congress to pass ratifying legislation by November 15 of this year, when the settlement agreement terminates. We are here today precisely because we want to work with you – Chairman Bingaman, Senator Domenici, and Members of the Committees – to achieve that goal.

Before S.2018 is enacted, however, there are several amendments we would like to see adopted. These changes would help to make the bill more closely reflect the settlement agreement we worked so hard to reach with the Government and Tram Company.

First, we oppose the provision, Sec. 4(c)(3), which gives Sandoval and Bernalillo Counties the authority to consent or to withhold consent for new uses in the area. It appears that this provision is designed to level the playing field since the Pueblo was

granted an identical consent authority in the settlement agreement and in the bill. Despite the superficial appearance of equality, this grant of authority to the counties is not justified.

Unlike the Pueblo, the counties do not have property interests in the Mountain. Also in contrast to the Pueblo, the counties do not feel any sacred responsibility to protect the Mountain. We do not mean to disparage our friends' and neighbors' interest in preserving the Mountain for public enjoyment. But not only might public sentiment to protect the Mountain change over time – their interest simply cannot be compared to the obligation that we feel after centuries of religious and traditional practice, nor does it equate to our ownership rights to the Mountain.

More generally, S.2018 makes a number of other significant changes in the settlement the Pueblo agreed to, none of which are favorable to our interests. For example, the settlement recognized the Pueblo's exclusive authority to regulate hunting by our members on lands within the Area owned by the United States, and would have taken into trust lands we purchased in the Evergreen Hills subdivision, using several million dollars of our own funds. S.2018 removes these provisions, and makes other changes unfavorable for us. We believe the settlement agreement should be enacted. If it is not, and if we are forced to accept these and other changes S.2018 makes to the settlement, the Pueblo ~~must~~ should receive commensurate benefits in return.

{One possibility would be to add a specific land exchange provision to S.2018, building on the concept in Section 14(c). We have discussed this approach with Committee staff and a number of parties. Last week, the Commissioners of Sandoval County voted unanimously in favor of an exchange involving all federal wilderness lands within the Sandoval County portion of the claim area. We are willing to consider this and other similar land exchange proposals so long as they preserve and do not diminish our interests in the Area. ~~Last week, the Sandoval County Commissioners unanimously adopted a resolution supporting the settlement and proposing that all lands within the Area owned by the United States located in Sandoval County be transferred to the Pueblo with a perpetual easement being retained by the Forest Service for the Piedra Lisa trail. The Mountain lands in Sandoval County are virtually entirely undeveloped, and their chief uses by non-Indians, aside from hiking the Piedra Lisa trail, are by rock climbers. These uses of course would continue under the settlement agreement and S.2018. If it would promote resolution of this problem, the Pueblo is certainly willing to consider an exchange of our title to all lands in Evergreen Hills and the La Luz tract to the Forest Service in return for those Sandoval County lands so long as all these lands continue in perpetual wilderness status and remain subject to all limitations contained in the Act. We could also consider a perpetual easement for the Piedra Lisa trail.~~

Finally, I attach a number of other, more technical amendments.

Before concluding, I would like the Members here to know that we are willing to work with the Committees and all parties in good faith to fairly and justly resolve the Mountain issue. The years of litigation, the settlement negotiations, the legislative efforts to date – all have been time-consuming and costly. We want *a* solution. We cannot, however, support *any* solution. We simply cannot abandon our deeply-held beliefs or shirk our sacred responsibilities to generations past and generations to come. We are committed to finding a solution that provides fairness and justice to the Pueblo. Although it is not our preference – as our involvement in the settlement makes clear – if acceptable legislation cannot be adopted by November 15, we will first explore further options for settlement in good faith with the federal agencies and Tram Company. If that fails, we will then seek implementation of the Solicitor's opinion confirming our title. If we are compelled to do so, we will not hesitate to return to the courts, where we have been very successful so far.

Thank you again for calling this hearing and for giving all of the affected parties this opportunity to explore a legislative solution. I appreciate the opportunity to testify on behalf of the Pueblo of Sandia. I would be happy to try to answer any questions the Committee might have.

APPENDIX

Section 3(b) should be amended to specify the 100 feet is “linear feet” and not feet above mean sea level, so that there is no possible ambiguity.

In Section 4(c), a new Section 4(c)(4) should be added reading as follows:

“Administration of the Area shall not be subject to the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476), as amended by the National Forest Management Act, 16 U.S.C. §§ 1600-1614, or to the Forest Service planning regulations at 36 C.F.R. § 219, or to amendments to these acts and regulations. The Area shall continue to be administered by and remain a part of the Cibola National Forest, but it shall not be subject to the Cibola National Forest Land and Resource Management Plan.”

The Pueblo needs to be certain the Management Plan is not foreclosed by any of these authorities.

In Section 4(d), the words “of the Senate” should be added at the end of the second sentence.

Section 4(e) should be preceded with the language “Except as provided in Section 14 of this Act.”

At the end of Sections 4(g), add the words “except as provided in Section 14 of this Act.”

In Sections 5(a)(5) and 9(a), add “and section 14.”

Section 6(a)(1) should be preceded by the words “Except as provided in Section 14 of this Act.”

In Section 6(b), substitute “section 5(a)” for “section 5(a)(4).”

In Section 7(b)(2)(C), insert “of” after “use.”

In Section 9(a), add “and 14” after “8.”

In Section 10(d), substitute “within” for “with.”